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1993

# The State of Utah v. Sheila J. Shipler : Brief of Appellant

Utah Court of Appeals

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Ronald S. Fujino; Salt Lake Legal Defender Assoc.; Attorney for Appellant.

Jan Graham; Attorney General; Attorney for Appellee.

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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THE STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	
SHEILA J. SHIPLER,	:	Case No. 930164-CA
Defendant/Appellant.	:	Priority No. 2

---

BRIEF OF APPELLANT

Appeal from an order denying Ms. Shipler's motion to reduce her conviction to a misdemeanor in the Third District Court in and for Salt Lake County, State of Utah, the Honorable Kenneth Rigtrup, presiding.

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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THE STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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THE STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	
SHEILA J. SHIPLER,	:	Case No. 930164-CA
Defendant/Appellant.	:	Priority No. 2

---

JURISDICTIONAL STATEMENT

Jurisdiction is conferred on this Court pursuant to Utah Code Ann. section 78-2a-3(2)(f) (1992), and Utah R. Crim. P. 26(2)(a), whereby a defendant in a district court criminal action may take an appeal to the Court of Appeals from a final judgment and conviction for any crime other than a first degree or capital felony.

STATUTES AND CONSTITUTIONAL PROVISIONS

The pertinent parts of the following statutes and rules are contained in the text of this brief or in Addendum A:

Utah R. App. P. 3  
Utah R. Crim. P. 26  
Utah Code Ann. § 76-3-201(1) (Supp. 1992)  
Utah Code Ann. § 76-3-402 (1983 & Supp. 1990)  
Utah Code Ann. § 76-3-402 (Supp. 1991)  
Utah Code Ann. § 77-18a-1(1)(b) (Supp. 1992)

### STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW

Did the trial court misinterpret the statutory authority which governs the reduction of a defendant's conviction to a lower category of offense?

"Statutory interpretation presents a question of law. Utah appellate courts review questions of law under a correction of error standard, without deference to the trial court." State v. Bagshaw, 836 P.2d 1384, 1385 (Utah App. 1992) (citations omitted); accord State v. Duncan, 812 P.2d 60 (Utah App. 1991).

### STATEMENT OF THE CASE AND NATURE OF THE PROCEEDINGS

This is an appeal from an order denying Ms. Shipler's motion to reduce her conviction to a misdemeanor in the Third District Court in and for Salt Lake County, State of Utah, the Honorable Kenneth Rigtrup, presiding. The trial court's order of denial was dated March 9, 1993. (R 58). The underlying conviction and the proceedings from which the reduction process stemmed were specifically noted by the court in its "Findings of Fact." See infra Statement of the Facts.

### STATEMENT OF THE FACTS

On March 9, 1993, the trial court denied Ms. Shipler's motion to reduce her conviction to a misdemeanor. The "Findings of Fact" accompanying the court's order of denial are reprinted below:

1. That on October 22, 1990, the defendant entered a plea of "guilty" to the charge of Theft, a second degree felony;

2. That on November 19, 1990, the defendant was sentenced as a third-degree felony, pursuant to the provisions of § 76-3-402(1), Utah Code Ann. (1990), to serve, inter alia, the statutory term of zero-to-five years incarceration at the Utah State Prison;

3. That on November 19, 1990, the Court suspended the imposition of sentence and placed the defendant on probation; and

4. That on October 17, 1991, the Court terminated the defendant's probation as successful without violation.

(R 56-57). Also included in the November 19, 1990 sentencing order was "a term in the Utah State Prison . . . not to exceed five years; (Suspended)." (R 30).

On December 2, 1992, counsel for Ms. Shipler moved to reduce her conviction to a class B misdemeanor pursuant to the mandate of Utah Code Ann. § 76-3-402(2)(b) (1983 & Supp. 1990). (R 37). Following a continuance, the State opposed Ms. Shipler's motion and a hearing then was scheduled on the matter. (R 44-54).

The trial court initially appeared inclined to grant her motion, asking the prosecutor "What harm is done [by granting the reduction]?" (R 86). Ms. Shipler paid back the funds in question and fully complied with her probation. (R 35, 86-87). In the end, however, the court denied her motion, reasoning: the "imposition of sentence" had never been stayed. (R 91-93).

As more fully discussed below, the court's order was based on its interpretation of the statutory phrase, "[t]he imposition of the sentence is stayed and the defendant is placed on probation[.]" (R 93); Utah Code Ann. § 76-3-402(2)(b). Even though the zero-to-



five year term had been stayed, and notwithstanding Adult Probation and Parole's recommendation to the court that Ms. Shipler's "Probation be terminated as successful[,]" (R 35), the trial court concluded that the statute did not apply. (R 93).

#### SUMMARY OF THE ARGUMENT

The trial court erred when it refused to reduce Ms. Shipler's conviction to a misdemeanor. The mandate of the reduction statute is clear: "Whenever a conviction is for a felony, the conviction shall be deemed to be a misdemeanor if . . . [t]he imposition of the sentence is stayed and the defendant is placed on probation, . . . and [s]he is thereafter discharged without violating [her] probation." Utah Code Ann. § 76-3-402(2)(b). In the case at bar, the trial court imposed a zero-to-five year prison sentence on Ms. Shipler. The court then stayed or suspended the prison term and placed her on probation. Upon her successful completion of probation, Adult Parole and Probation contacted the court with the recommendation that her probation be terminated. The conditions contained in the statute had been met and her reduction should have been granted.

## ARGUMENT

### THE TRIAL COURT ERRED IN NOT REDUCING THE CONVICTION BECAUSE IMPOSITION OF SENTENCE HAD BEEN STAYED

The statute governing the case at bar, Utah Code Ann. § 76-3-402 (1983 & Supp. 1990), reads in pertinent part:

(2) Whenever a conviction is for a felony, the conviction shall be deemed to be a misdemeanor if:

. . .

(b) The imposition of the sentence is stayed and the defendant is placed on probation, whether committed to jail as a condition of probation or not, and he is thereafter discharged without violating his probation.

Utah Code Ann. § 76-3-402(2)(b) (emphasis added).

The issue here centers around the meaning of "imposition of the sentence." According to the trial court, this statutory phrase did not apply to its sentencing order of November 19, 1990. (R 92); (R 30) (a copy of the court's "Judgment, Sentence [Commitment]" order is attached in Addendum B). The court believed that imposition of sentence had not been suspended. (R 93).

Contrary to its claims, on November 19, 1990, the court sentenced Ms. Shipler "to a term in the Utah State Prison . . . not to exceed five years; (Suspended)." (R 30). The parathetical "Suspended" notation was typed in by the trial court. The order additionally read, "Defendant is granted a stay of the above prison sentence and placed on probation in the custody of this Court and under the supervision of [Adult Probation and Parole] . . ." (R 30) (emphasis added).

Despite this language, the trial court believed that it had only "executed sentence." (R 92); (R 93) ("I [the trial court] executed sentence. I did not suspend imposition of sentence."). However, the plain language of its order indicates that sentence was first imposed and then suspended pending completion of probation. Cf. State v. Bagshaw, 836 P.2d at 1386 (Utah App. 1992) (citations omitted) ("Unambiguous language in [a] statute may not be interpreted to contradict its plain meaning").

If, as advocated by the State [and accepted by the court], imposition of sentence is stayed only when the term of imprisonment is not "set" by the sentencing order, (R 52), the sentencing provisions would be rendered meaningless. See also (R 52) (in its "Memorandum in Opposition to Defendant's Motion to Reduce Degree of Offense", the State claimed, "a sentence is imposed when the term of imprisonment or incarceration is set"). While a sentence "set" by the court may be an imposition, it does not follow that an "unset" sentence is stayed. (R 52). A sentence is not merely "stayed" when left unstated, the sentence does not exist. Moreover, if recognized such a "stayed sentence" would leave the "sentenced" person with no final order from which he or she could appeal. See Utah Code Ann. § 77-18a-1(1)(b); Utah R. App. P. 3; Utah R. Crim. P. 26; Hinkins v. Santi, 25 Utah 2d 324, 481 P.2d 53 (1971).

The flaw in the court's ruling is further reflected by the following colloquy:

[Counsel for Ms. Shipler]: Okay. And so the Court's finding, just so I am clear on this, is that . . .

THE COURT: [My November 19, 1990, order was an execution of the] sentence. I did not suspend imposition of sentence.

[Counsel for Ms. Shipler]: Well, the Court did suspend it. Now, the statute says "stayed" --

THE COURT: I suspended execution on any confinement.

[Counsel for Ms. Shipler]: All right.

THE COURT: And placed her on probation on the following terms and conditions.

[Counsel for Ms. Shipler]: And so --

THE COURT: The only thing I suspended was the execution on any prison sentence.

[Counsel for Ms. Shipler]: Okay. The Court's ruling is that because the imposition of sentence was not stayed, is that correct, that the subsection does not apply?

THE COURT: Right.

(R 92-93).

The court's ruling suggests that the November 19, 1990, "Judgment, Sentence [Commitment]" order constituted both an "execution" and "suspension" of sentence. (R 30). According to the court, when it filled out the order, sentence was "executed." (R 92). However, the very same actions or inactions also "suspended" imposition of the executed sentence. (R 92). Overlooked by the court is the fact that probation is a sentence, too. See Utah Code Ann. § 76-3-201(1)(c). Under the court's interpretation of subsection (2)(b), a reduction could never occur because probation would first have to be "set." But a court could not set probation because if that were done, imposition of sentence

would not have been stayed. The reduction statute could never be triggered if, for example, a court "set" a sentence of a \$100 fine, see Utah Code Ann. § 76-3-201(1)(a), and immediately stayed payment in favor of (the successful completion of) probation. Subsection (2)(b) should allow a reduction in such circumstances, Utah Code Ann. § 76-3-402(2)(b), but the trial court's ruling would not.

A distinction "between the suspension of the imposition and the suspension of the execution of a sentence. . ." finds no support in the plain meaning of the statute and would lead to absurd results. (R 52); Utah Code Ann. § 76-3-402(2)(b); State v. Bagshaw, 836 P.2d 1384 (Utah App. 1992). Case law also does not warrant such an interpretation.

For example, in Bagshaw, "defendant pled guilty to two counts of obtaining controlled substances by fraud. . . . Defendant's sentences were suspended and [she] was placed on probation for eighteen months." 836 P.2d 1384 (emphasis added). The trial court there, like the court here, noted parenthetically on its sentencing order that the prison term(s) were "suspended." See Addenda B & C. The courts in both cases also noted, "Defendant is granted a stay of the above prison sentence and placed on probation . . ." See Addenda B & C.

Since Ms. Bagshaw's suspended prison term and her successful completion of probation fell squarely within subsection (2)(b), see Utah Code Ann. § 76-3-402(2)(b) (1983 & Supp. 1990), the trial court reduced her convictions to class A misdemeanors. Bagshaw, 836 P.2d at 1384-85. On appeal, Ms. Bagshaw argued that

the reductions should have been to class B misdemeanors. This Court agreed, ruling that because the reduction statute failed to specify the category of misdemeanor intended, "defendant's two third degree felony convictions should be further reduced from class A to class B misdemeanor convictions." Bagshaw, 836 P.2d at 1386.

Ms. Shipler's suspended prison term and her successful completion of probation should be treated no differently than Ms. Bagshaw's sentence, particularly since the trial court in both cases were the same.<sup>1</sup> See Addenda B & C.

The authority relied upon by the State is also not inconsistent with the proper interpretation of a "stayed" imposition of sentence. See (R 48-53) (State's "Memorandum in Opposition to Defendant's Motion to Reduce Degree of Offense") (citing Williams v. Harris, 149 P.2d 640 (Utah 1944); State v. Fedder, 262 P.2d 753 (Utah 1953); State v. Janis, 597 P.2d 873 (Utah 1979); State v. Garnick, 619 P.2d 1383 (Utah 1980)). In each cited case, probation played a critical role in the proceedings. Although the involved trial courts may have suspended the imposition of a prison sentence, the courts nonetheless "set" sentence by imposing a period of probation. To say that in those cases the "imposition of sentence" was "stayed" would be to ignore the order imposing probation and the

---

1 The Honorable Kenneth Rigtrup presided over the trial court in Bagshaw and in the case at bar. Compare Addendum B with Addendum C. In Bagshaw, however, the court did not contend that imposition of sentence had not been stayed. When Ms. Shipler's motion was presented, the court changed its position and its reading of the reduction statute.

accompanying restrictions and conditions which the defendants were required to adhere to.<sup>2</sup> The trial court's reading of the statute and its ruling that subsection (2)(b) did not apply is subject to correction.

---

2 The trial court's ruling also ignored the State's argument, "I don't think the legislature ever intended a defendant to be able to reduce their conviction twice, once at sentencing and again." (R 85, 91-93). The statute relied on by the State, Utah Code Ann. section 76-3-402 (Supp. 1991), is inapplicable to the case at bar. The more restrictive amendments became effective on April 29, 1991, five months after the November 19, 1990, sentencing order. By contrast, the unamended version of the statute and the language in effect at the time of the 1990 sentencing was Utah Code Ann. section 76-3-402 (1983 & Supp. 1990). See (R 30); (R 6-7) (1990 was the date alleged in the Information); Harris v. Smith, 541 P.2d 343 (Utah 1975) (emphasis in original) ("In State v. Miller we held that the law in force at the time of sentencing governed and in Belt v. Turner we held that an amendment to the statute passed after sentence had been imposed had no effect on the matter"); State v. Miller, 24 Utah 2d 1, 464 P.2d 844 (1970); Belt v. Turner, 25 Utah 2d 230, 479 P.2d 791, on reh'g, 25 Utah 2d 380, 483 P.2d 425 (1971); compare (R 89-90) (a misdemeanor reduction at the 1990 sentencing would have been proper), with State v. Scheel, 823 P.2d 470 (Utah App. 1991) ("the defendant's sentence . . . [may] be remanded for resentencing 'because of the clear error in the original [sentence].'"")

Nothing in the 1983 statute prohibits a two degree reduction. In fact, subsection (2) of the statute mandates a reduction following one of two stated occurrences. Utah Code Ann. § 76-3-402 (1983 & Supp. 1990); State v. Bagshaw, 836 P.2d 1384 (Utah App. 1992). "[S]tatutory interpretation 'must be based on the language used, . . . and the court has no power to rewrite a statute to make it conform to an intention not expressed.'" Cox Rock Products v. Walker Pipeline Constr., 754 P.2d 672, 676 (Utah App. 1988) (quoting Mountain States Tel. & Tel. Co. v. Public Serv. Comm'n, 107 Utah 502, 502 155 P.2d 184, 185 (Utah 1945)); accord Bagshaw, 836 P.2d at 1385-86 ("where statutory language is clear and unambiguous, Utah courts do not look to legislative intent"). The legislature did not amend the reduction statute or express a contrary intent until 1991. Utah Code Ann. § 76-3-402 (Supp. 1991). The limitations now reflected by the 1991 amendments are separate and apart from the requirements of the 1983 enactment.

In summary, on November 19, 1990, the trial court sentenced Ms. Shiplier "to a term in the Utah State Prison . . . not to exceed five years; (Suspended)." (R 30). The court granted Ms. Shiplier "a stay of the above (prison) sentence and placed [her] on probation. . ." (R 30). Following Ms. Shiplier's adherence to, and successful completion of the conditions of her probation, Adult Probation and Parole notified the court and recommended that her probation be terminated. (R 35). The reduction statute could not have been more aptly worded for the circumstances at hand. "The imposition of [Ms. Shiplier's] sentence [was] stayed and [she was] placed on probation[.]" Utah Code Ann. § 76-3-402(2)(b).

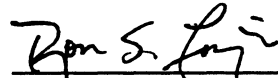
Since Ms. Shiplier complied with the plain language of the statute and because the reduction to a misdemeanor is mandatory, see id. ("the conviction shall be deemed to be a misdemeanor"), her conviction should be reduced to a class B misdemeanor. State v. Bagshaw, 836 P.2d at 1386 (Utah App. 1992) (under the 1990 version of the reduction statute, "[w]here the code fails to specify the category of misdemeanor intended, it 'is a class B misdemeanor'").



CONCLUSION

Ms. Sheila Shipler respectfully requests that this Court reverse the trial court's order of denial and reduce her conviction to a class B misdemeanor.

SUBMITTED this 23<sup>rd</sup> day of June, 1993.

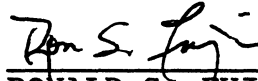


\_\_\_\_\_  
RONALD S. FUJINO

Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, RONALD S. FUJINO, hereby certify that I have caused eight copies of the foregoing to be delivered to the Utah Court of Appeals, 400 Midtown Plaza, 230 South 500 East, Salt Lake City, Utah 84102, and two copies to the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 23<sup>rd</sup> day of June, 1993.



\_\_\_\_\_  
RONALD S. FUJINO

DELIVERED by \_\_\_\_\_

this \_\_\_\_\_ day of June, 1993.

\_\_\_\_\_

## **ADDENDUM A**

## TITLE II. APPEALS FROM JUDGMENTS AND ORDERS OF TRIAL COURTS.

### Rule 3. Appeal as of right: how taken.

(a) **Filing appeal from final orders and judgments.** An appeal may be taken from a district, juvenile, or circuit court to the appellate court with jurisdiction over the appeal from all final orders and judgments, except as otherwise provided by law, by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal or other sanctions short of dismissal, as well as the award of attorney fees.

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UTAH RULES OF CRIMINAL PROCEDURE

Rule 26

### Rule 26. Appeals.

(1) An appeal is taken by filing with the clerk of the court from which the appeal is taken a notice of appeal, stating the order or judgment appealed from, and by serving a copy of it on the adverse party or his attorney of record. Proof of service of the copy shall be filed with the court.

(2) An appeal may be taken by the defendant from:

- (a) the final judgment of conviction, whether by verdict or plea;
- (b) an order made, after judgment, affecting the substantial rights of the defendant;
- (c) an interlocutory order when, upon petition for review, the appellate court decides that the appeal would be in the interest of justice; or
- (d) any order of the court judging the defendant by reason of a mental disease or defect incompetent to proceed further in a pending prosecution.

### 77-18a-1. Appeals — When proper.

(1) An appeal may be taken by the defendant from:

- (a) the final judgment of conviction, whether by verdict or plea;
- (b) an order made after judgment that affects the substantial rights of the defendant;
- (c) an interlocutory order when upon petition for review the appellate court decides the appeal would be in the interest of justice; or
- (d) any order of the court judging the defendant by reason of a mental disease or defect incompetent to proceed further in a pending prosecution.

## SENTENCING

### 76-3-201. Sentences or combination of sentences allowed — Civil penalties — Restitution — Definitions — Resentencing — Aggravation or mitigation of crimes with mandatory sentences.

(1) Within the limits prescribed by this chapter, a court may sentence a person adjudged guilty of an offense to any one of the following sentences or combination of them:

- (a) to pay a fine;
- (b) to removal from or disqualification of public or private office;
- (c) to probation unless otherwise specifically provided by law;
- (d) to imprisonment;
- (e) to life imprisonment;

Utah Code Ann. Sec. 76-3-402 (1983 + SUPP. 1990)

**76-3-402. Conviction of lower category of offense.**

(1) If the court, having regard to the nature and circumstances of the offense of which the defendant was found guilty and to the history and character of the defendant, concludes that it would be unduly harsh to record the conviction as being for that category of offense established by statute and to sentence the defendant to an alternative normally applicable to that offense, the court may, unless otherwise specifically provided by law, enter a judgment of conviction for the next lower category of offense and impose sentence accordingly.

(2) Whenever a conviction is for a felony, the conviction shall be deemed to be a misdemeanor if:

(a) The judge designates the sentence to be for a misdemeanor and the sentence imposed is within the limits provided by law for a misdemeanor; or

(b) The imposition of the sentence is stayed and the defendant is placed on probation, whether committed to jail as a condition of probation or not, and he is thereafter discharged without violating his probation.

(3) Nothing in this section shall be construed to preclude any person from obtaining or being granted an expungement of his record as provided by law.

Utah Code Ann. Sec. 76-3-402 (SUPP. 1991)

**76-3-402. Conviction of lower degree of offense.**

(1) If the court, having regard to the nature and circumstances of the offense of which the defendant was found guilty and to the history and character of the defendant, concludes it would be unduly harsh to record the conviction as being for that degree of offense established by statute and to sentence the defendant to an alternative normally applicable to that offense, the court may unless otherwise specifically provided by law enter a judgment of conviction for the next lower degree of offense and impose sentence accordingly.

(2) If a conviction is for a third degree felony the conviction is considered to be for a class A misdemeanor if:

(a) the judge designates the sentence to be for a class A misdemeanor and the sentence imposed is within the limits provided by law for a class A misdemeanor; or

(b) (i) the imposition of the sentence is stayed and the defendant is placed on probation, whether committed to jail as a condition of probation or not;

(ii) the defendant is subsequently discharged without violating his probation; and

(iii) the judge upon motion and notice to the prosecuting attorney, and a hearing if requested by either party or the court, finds it is in the interest of justice that the conviction be considered to be for a class A misdemeanor.

(3) An offense may be reduced only one degree under this section unless the prosecutor specifically agrees in writing or on the court record that the offense may be reduced two degrees. In no case may an offense be reduced under this section by more than two degrees.

(4) This section may not be construed to preclude any person from obtaining or being granted an expungement of his record as provided by law.

## **ADDENDUM B**

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

vs.

SHIPLER, SHEILA J.

DOB: 7/28/64

Defendant.

JUDGMENT, SENTENCE  
(COMMITMENT)

Case No. 901901599 ES  
Count No. two  
Honorable KENNETH RIGTRUP  
Clerk Constance George  
Reporter Carlton Way  
Bailiff Stan Jacobson  
Date November 19, 1990

*RR* ■ The motion of R. Scowcroft to enter a judgment of conviction for the next lower category of offense and impose sentence accordingly is ☒ granted ☐ denied. There being no legal or other reason why sentence should not be imposed, and defendant having been convicted by ☐ a jury; ☐ the court; ☒ plea of guilty; ☐ plea of no contest; of the offense of Theft, a felony of the 2nd degree, ☐ a class \_\_\_\_\_ misdemeanor, being now present in court and ready for sentence and represented by R. Scowcroft, and the State being represented by T. Vuyk, is now adjudged guilty of the above offense, is now sentenced to a term in the Utah State Prison:

- RR* ☐ to a maximum mandatory term of \_\_\_\_\_ years and which may be for life; 2161287  
*RR* ☒ not to exceed five years; (Suspended). 11-26-90-8:35am  
☐ of not less than one year nor more than fifteen years;  
☐ of not less than five years and which may be for life;  
☐ not to exceed \_\_\_\_\_ years;  
*RR* ☒ and ordered to pay a fine in the amount of \$ 1,000.00 \$600. May work off thru Comm/Ser at \$5.Hr  
*RR* ☒ and ordered to pay restitution in the amount of \$ ----- to Reserved for a Hearing  
*RR* ☒ Deft to pay \$250.00 Victim Restitution Assess Fee. & \$200.00 Recoupement Fee to LDA  
☐ such sentence is to run concurrently with \_\_\_\_\_  
☐ such sentence is to run consecutively with \_\_\_\_\_  
☒ upon motion of ☒ State, ☐ Defense, ☐ Court, Count(s) 1 & 3 are hereby dismissed.  
☐ \_\_\_\_\_  
*RR* ☒ Defendant is granted a stay of the above (☒ prison) sentence and placed on probation in the custody of this Court and under the supervision of the Chief Agent, Utah State Department of Adult Parole for the period of 36 months, pursuant to the attached conditions of probation.  
☐ Defendant is remanded into the custody of the Sheriff of Salt Lake County ☐ for delivery to the Utah State Prison, Draper, Utah, or ☐ for delivery to the Salt Lake County Jail, where defendant shall be confined and imprisoned in accordance with this Judgment and Commitment.  
☐ Commitment shall issue \_\_\_\_\_

DATED this 21st day of November, 1990

APPROVED AS TO FORM:

Kenneth Rigtrup  
DISTRICT COURT JUDGE  
KENNETH RIGTRUP

\_\_\_\_\_  
Defense Counsel

\_\_\_\_\_  
Deputy County Attorney

Page 1 of 2

Judgment/State v. SHIPLER, SHEILA J. /CR \_\_\_\_\_ /Honorable KENNETH RIGTRUP**CONDITIONS OF PROBATION**

- ☒ Usual and ordinary conditions required by the Dept. of Adult Probation & Parole.
- ☐ Serve \_\_\_\_\_  
in the Salt Lake County Jail commencing \_\_\_\_\_.
- ☒ Pay a fine in the amount of \$1000. at a rate to be determined by the Department of Adult Probation and Parole; or ☐ at the rate of (\$600.00 may be worked off at the rate \$5.00 Hr. through Community service)
- ☒ Pay restitution in the amount of \$ ---; or ☒ in an amount to be determined by the Department of Adult Probation and Parole; ☐ at a rate of or by the Court; or ☐ at a rate to be determined by the Department of Adult Probation and Parole. (reserved for hearing)
- ☒ Enter, participate in, and complete any Mental Health program, counseling, or treatment as directed by the Department of Adult Probation and Parole, including evaluations
- ☐ Enter, participate in, and complete the \_\_\_\_\_ program at \_\_\_\_\_.
- ☐ Participate in and complete any ☐ educational; and/or ☐ vocational training ☐ as directed by the Department of Adult Probation and Parole; or ☐ with \_\_\_\_\_.
- ☐ Participate in and complete any \_\_\_\_\_ training ☐ as directed by the Department of Adult Probation and Parole; or ☐ with \_\_\_\_\_.
- ☐ Submit person, residence, and vehicle to search and seizure for the detection of drugs.
- ☐ Submit to drug testing.
- ☐ Not associate with anyone who illegally uses, sells, or otherwise distributes narcotics or drugs.
- ☐ Not frequent any place where drugs are used, sold, or otherwise distributed illegally.
- ☐ Not use or possess non-prescribed controlled substances.
- ☐ Refrain from the use of alcoholic beverages.
- ☐ Submit to testing for alcohol use.
- ☐ Take antabuse ☐ as directed by the Department of Adult Probation and Parole.
- ☐ Obtain and maintain full-time employment.
- ☒ Maintain full-time employment.
- ☐ Obtain and maintain full-time employment or full-time schooling.
- ☐ Maintain full-time employment or obtain and maintain full-time schooling.
- ☐ Defendant is to have no contact nor associate with \_\_\_\_\_.
- ☐ Defendant's probation may be transferred to \_\_\_\_\_ under the Interstate Compact as approved by the Department of Adult Probation and Parole.
- ☐ Complete \_\_\_\_\_ hours of community service restitution as directed by the Department of Adult Probation and Parole.
- ☐ Complete \_\_\_\_\_ hours of community service restitution in lieu of \_\_\_\_\_ days in jail.
- ☒ Defendant is to commit no crimes.
- ☐ Defendant is ordered to appear before this Court on \_\_\_\_\_ for a review of this sentence.
- ☒ Defendant to pay \$200.00 Recoupement Fee to LDA \_\_\_\_\_.
- ☒ Defendant to pay \$250.00 Victim Restitution Assessment Fee \_\_\_\_\_.
- ☒ Defendant to not use or possess any credit cards and/or checking accounts etc... \_\_\_\_\_.
- ☐ \_\_\_\_\_
- ☐ \_\_\_\_\_
- ☐ \_\_\_\_\_

DATED this 21 day of November, 1990  
DISTRICT COURT JUDGE

KENNETH RIGTRUP

STATE OF UTAH  
ADULT PROBATION AND PAROLE

PROGRESS/VIOLATION REPORT

TO: THIRD JUDICIAL DISTRICT COURT  
Salt Lake County, Utah

REGARDING: Shipler, Sheila Joy

ATTN: Judge Kenneth Rigtrup

~~FILED DISTRICT COURT~~  
CASE NO.: 90190159-4 Third Judicial District

FROM: Field Operations/Region III

OFFENSE: OCT 17 1991

DATE: August 21, 1991

PROBATION DATE: November 21, 1990

OBSCIS: 00059434

SALT LAKE COUNTY  
*C. George*  
Deputy Clerk

EMPLOYMENT: West Valley Child Care  
5720 W. 3575 S.; West Valley City, UT 84120

ADDRESS: 5720 W. 3575 S.

DEFENSE ATTORNEY: Robert Scowcroft

COMMENTS: On November 21, 1990, the defendant was ordered 36 months probation with the following special conditions:

1. Usual/ordinary conditions of 36 months probation;
2. Pay \$1000.00 fine;
3. Pay restitution in the amount \$5000.00;
4. Enter, participate in and complete mental health substance abuse counseling;
5. Maintain full-time employment;
6. Commit no new crimes;
7. Pay \$200.00 to Legal Defender's Association;
8. Pay \$250.00 to Victim Restitution Assessment Fee;
9. No checking account or credit cards while on probation.

As of August 9, 1991, the defendant reports monthly and has satisfied all special conditions of her probation.

IMMEDIATE ACTION TAKEN BY AGENT: NOTIFY THE COURT AND SUPERVISOR.

RECOMMENDATION: Probation be terminated as successful.

*Ed Blanchard*  
Ed Blanchard, SUPERVISOR

*Teague Eskelson*  
Teague Eskelson, PROBATION OFFICER

APPROVED AND ORDERED: *Kenneth Rigtrup*

DENIED: \_\_\_\_\_

DATE: *October 17, 1991*

COMMENTS: \_\_\_\_\_



## **ADDENDUM C**

FILED DISTRICT COURT  
JUDGMENT

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

AUG 23 1989

THE STATE OF UTAH,

SALT LAKE COUNTY  
By E. Bowman  
Deputy Clerk

Plaintiff,

JUDGMENT, SENTENCE  
(COMMITMENT)

vs.

Baughaw, Robin D

DOB: 3-29-61

Defendant.

Case No. 891900744 FS  
Count No. ONE + TWO  
Honorable Kenneth Rietrup  
Clerk Constance U. George  
Reporter Hal Walton  
Bailiff Stan Jacobsen  
Date July 31, 1989

☐ The motion of \_\_\_\_\_ to enter a judgment of conviction for the next lower category of offense and impose sentence accordingly is ☐ granted ☐ denied. There being no legal or other reason why sentence should not be imposed, and defendant having been convicted by ☐ a jury; ☐ the court; ☒ plea of guilty; ☐ plea of no contest; of the offense of Obtaining Controlled Substance by Fraud, 2 Counts, a felony of the 3rd degree, ☐ a class \_\_\_\_\_ misdemeanor, being now present in court and ready for sentence and represented by Betsy Bowman and the State being represented by Glen Twaski, is now adjudged guilty of the above offense, is now sentenced to a term in the Utah State Prison:

☐ to a maximum mandatory term of \_\_\_\_\_ years and which may be for life;

☒ not to exceed five years: (Suspended) COUNT I

☐ of not less than one year nor more than fifteen years;

☐ of not less than five years and which may be for life;

☒ not to exceed five years: (Suspended) COUNT II

☒ and ordered to pay a fine in the amount of \$ 600.00 may work off \$300.00 @ 4:00 HR THRU COM SERV

☐ and ordered to pay restitution in the amount of \$ \_\_\_\_\_ to \_\_\_\_\_

☒ Defendant to pay \$150.00 VICTIM RESTITUTION ASSESSMENT

☐ such sentence is to run concurrently with \_\_\_\_\_

☒ such sentence is to run consecutively with Time on other count.

☐ upon motion of ☐ State, ☐ Defense, ☐ Court. Count(s) \_\_\_\_\_ are hereby dismissed.

☐

☒ Defendant is granted a stay of the above (☒ prison) sentence and placed on probation in the custody of this Court and under the supervision of the Chief Agent, Utah State Department of Adult Parole for the period of 18 MONTHS pursuant to the attached conditions of probation.

☐ Defendant is remanded into the custody of the Sheriff of Salt Lake County ☐ for delivery to the Utah State Prison, Draper, Utah, or ☐ for delivery to the Salt Lake County Jail, where defendant shall be confined and imprisoned in accordance with this Judgment and Commitment.

☐ Commitment shall issue \_\_\_\_\_

DATED this 3<sup>rd</sup> day of August, 1989

APPROVED AS TO FORM:

Kenneth Rietrup  
DISTRICT COURT JUDGE  
Kenneth Rietrup

Defense Counsel

Deputy County Attorney